

# Terms of Service

These Terms of Service govern your use of all Dataplazma software and/or services (the “Services”). By mutually executing an Order Form with Dataplazma that references these Terms of Service or by using the Dataplazma website, You agree to these Terms of Service and the applicable Order Form (together with the DPA, if applicable, the “Agreement”). You represent that you are entering into this Agreement on behalf of the entity identified on the Order Form (“you” or “Customer”) and that you have authority to bind the Customer to this Agreement.

Dataplazma reserves the right to periodically modify these Terms of Service upon written notice to Customer, and such modification will automatically become effective thirty (30) days after such modification. If you do not agree with a modification to these Terms of Service, you must notify Dataplazma within thirty (30) days after receiving notice of such modification. If you provide such written notice, Your Agreement will continue to be governed by the version of the Terms of Service made prior to the such modification for the remainder of the then-current Term. Upon any renewal of this Agreement pursuant to Section 9 below, the then-current Terms of Service published on the Dataplazma website will automatically be incorporated into this Agreement as of such date.

## **1. Access Grant.**

(a) Provision of Access. Subject to all the terms and conditions of this Agreement, Dataplazma will provide Customer with access to the Services described in the applicable Order Form during the Term, through the Internet, solely for Customer’s internal use. This Agreement and the access provided hereunder are non-transferable, except as expressly provided herein. Dataplazma retains all rights not expressly granted to the Customer pursuant to this Agreement.

(b) Customer Use of the Services. Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services (provided that reverse

engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own benefit; rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation to any third party; remove any proprietary notices from the Services or Documentation; use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations, including but not limited to any European privacy, intellectual property, consumer and child protection, obscenity or defamation laws. Customer will cooperate with Dataplazma in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Dataplazma may reasonably request. Customer will also cooperate with Dataplazma in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services. Customer will designate an employee who will be responsible for all matters relating to this Agreement ("Primary Contact"). Customer may change the individual designated as Primary Contact at any time by providing written notice to Dataplazma.

(c) Modification of Services. Dataplazma may update the Services from time to time, in its sole and absolute discretion. If Dataplazma changes the Services in a manner that materially reduces the aggregate functionality of the Service, Dataplazma will make commercially reasonable efforts to inform Customer thirty (30) days ahead of the effective date of such changes, and Customer will have the right to terminate this Agreement upon thirty (30) days' written notice to Dataplazma (provided that Dataplazma receives such notice within thirty (30) days of such reduction in functionality). In the event that Customer terminates this Agreement pursuant to this Section 1(c), Dataplazma will provide Customer with a prorated refund of any pre-paid Fees with respect to the then-remaining Term as of the effective date of such termination.

(d) Future Functionality. Customer agrees that Customer's subscription to the Service and acceptance of this Agreement are not contingent on the delivery of any future functionality or features.

## **2. Dataplazma Responsibilities.**

(a) Service Levels. Subject to the terms and conditions of this Agreement, Dataplazma shall use commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven days a week, except for: (i) planned downtime; and (ii) unavailability caused by circumstances beyond Dataplazma's control, including but not limited to acts of God, internet service provider failures or delays, and denial of service attacks.

(b) Information Security. Dataplazma will use commercially reasonable technical and organizational measures that are reasonably designed to: maintain an industry-standard level of security, prevent unauthorized access to and/or disclosure of Customer Confidential Information. Those safeguards will include, but will not be limited to, measures reasonably designed to prevent access, use, modification or disclosure of electronic data and information submitted by or for Customer to the Service (collectively, "Customer Data") by Dataplazma personnel except (a) to provide the Services and prevent or address service or technical problems with the Services, (b) as required by applicable law in accordance with Section 6(v) below, or (c) as Customer may expressly permit in writing. To the extent Dataplazma processes Customer Data subject to the EU General Data Protection Regulation ("GDPR") which is hereby incorporated by reference, shall apply and the parties agree to comply with such terms.

### **3. Customer Responsibilities.**

(a) General. Customer is responsible and liable for all uses of the Service resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of employees and agents of Customer that are authorized to use the software ("Authorized Users"), and any act or omission by an Authorized User that would constitute a breach of this Agreement if performed by Customer. Customer shall make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

(b) Customer Content; Compliance with Laws. Customer represents, warrants and covenants that Customer and its employees will not produce content or otherwise use the Service in a manner that (i) infringes or violates the intellectual property rights or property rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any law, statute, ordinance or regulation; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable; or, (iv) contains a virus or other harmful computer file, or program. Further, Customer represents, warrants and covenants that Customer, in performance of its obligations and/or exercise of its rights pursuant to this Agreement, will comply with all applicable laws and regulations. Customer further acknowledges that Customer is responsible for all employee activity in connection with the Services and that fraudulent, abusive, or otherwise illegal activity may be grounds for termination of this Agreement.

(c) Third-Party Products. The Services may include connections and/or links to third party websites and/or services not included in the core Services offerings identified in the Order Form, including, without limitation, via application programming interfaces (collectively, "Third Party Services"). When you access Third Party Services, you do so at your own risk. You hereby represent and warrant that you have read and agree to be bound by all applicable policies of any Third Party Services relating to your use of the

Services and that you will act in accordance with those policies, in addition to your obligations under this Agreement. Dataplazma has no control over, and assumes no responsibility for: (a) the content, accuracy, privacy policies, practices, availability or operations of any Third Party Services, nor any availability or operation of the Services to the extent caused by or dependent upon Third Party Services; or (b) any disclosure, modification or deletion of Customer Data resulting from your use of or access to Third Party Services. Dataplazma does not make any representations or warranties with respect to Third Party Services. Any exchange of data or other interaction between you and Third Party Services is solely between you and the operator of such Third Party Services, and is governed by your agreement with such third party, and such Third Party Service privacy policy.

#### **4. Fees and Payment.**

(a) Fees. Customer will pay Dataplazma the applicable fees described in the Order Form (collectively, "Fees") in accordance with the terms of this Agreement. If Customer believes that Dataplazma has billed Customer incorrectly, Customer must contact Dataplazma no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared, to receive an adjustment or credit. Inquiries should be directed to [billing@Dataplazma.com](mailto:billing@Dataplazma.com). Except as expressly set forth in this Agreement, all Fees are non-cancellable and non-refundable.

(b) Renewal Service Term Fees. In the event that Customer exceeds any Employee Limit identified in an applicable Order Form, a prorated increase in fees will automatically be assessed and applied to the invoice for the Renewal Service Term. Dataplazma reserves the right to change the Renewal Service Term fees or applicable charges and to institute new charges and fees at the end of any Service Term, upon thirty (30) days prior notice to Customer. Without limiting the foregoing, any Renewal Term in which subscription volume for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior Term's per-unit pricing.

(c) Invoices. Unless otherwise specified in an Order Form, Dataplazma will bill through an invoice and full payment for invoices issued must be received by Dataplazma thirty (30) days after the electronic delivery date of the invoice.

(d) Credits. Any credits due to a Customer will be applied on the next invoice against amounts then due. If there are no future invoices expected, Dataplazma will issue a payment to Customer for credits due.

(e) Taxes. Any amounts payable hereunder are exclusive of, and Customer shall be responsible for all taxes, including general sales tax, value added taxes, duties, use taxes, withholdings and other governmental assessments, excluding taxes based on the net income of Dataplazma, unless Customer provides to Dataplazma a valid tax-exempt certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Dataplazma on account thereof.

#### **5. Intellectual Property.**

(a) Dataplazma IP. Except as expressly set forth in this Agreement, Dataplazma will own and retain all right, title and interest in and to (a) the Services, including all software, improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed as part of any Professional Services (as set forth in an Order Form or Statement of Work mutually executed by both parties hereto that references this Agreement) or support, and (c) all intellectual property rights related to all of the foregoing. This Agreement does not grant Customer (i) any rights to the Intellectual Property Rights in the Services or (ii) any rights to use the Dataplazma trademarks, logos, domain names, or other brand features. "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.

(b) Customer Data. Customer gives Dataplazma permission to view data and take actions within Customer's Dataplazma account for the purpose of delivering the Services, including support, maintenance, and onboarding, as well as to make design choices relating to the technical administration of the Services, for example, how the Service backs up data to keep it safe. Customer may request Dataplazma to perform actions within Customer's Dataplazma account, and in doing so hereby grants Dataplazma the limited permission to view, create, and modify Dataplazma data in Customer's Dataplazma account to fulfill the request, including but not limited to candidate records, reports, and account configurations. While not limited to the following, additional examples of the permissions encompassed in this section are: viewing or acting within an employee's Dataplazma account to reproduce an issue or bug, creating or uploading job postings in the onboarding process, merging sources or tags, exporting data to produce a custom report, etc. Customer may request Dataplazma to perform actions within Customer's Dataplazma account, and in doing so hereby grants Dataplazma the limited permission to view, create, and modify Customer Data in Customer's Dataplazma account to fulfill the request, including but not limited to candidate records, reports, and account configurations. While not limited to the following, additional examples of the permissions encompassed in this section are: viewing or acting within an employee's Dataplazma account to reproduce an issue or bug, creating or uploading job postings in the onboarding process, merging sources or tags, exporting data to produce a custom report, etc. CUSTOMER RETAINS ALL RIGHTS, TITLE AND INTEREST IN ITS CUSTOMER DATA, AND THIS AGREEMENT DOES NOT GRANT Dataplazma ANY RIGHTS TO CUSTOMER DATA OR THE INTELLECTUAL PROPERTY RIGHTS EMBODIED IN CUSTOMER DATA EXCEPT FOR THE LIMITED RIGHTS EXPRESSLY SET FORTH IN THIS AGREEMENT.

(c) Blind Data. Notwithstanding anything to the contrary, Dataplazma will be free (during and after the term hereof) to, without any obligation to Customer to collect, develop, create, extract, compile, synthesize, analyze and commercialize statistics, benchmarks, measures and other information based on "Anonymized Data" (collectively "Blind Data"). "Anonymized Data" means Customer Data that is: (i) anonymized by removing any personal or other information so the data is in no way attributable to Customer, any of Customer's employees, or any other individual or entity, and (ii) presented in a way which does not reveal Customer's identity.

(d) Feedback. Notwithstanding anything to the contrary, if Customer or any of its employees or contractors provide Dataplazma with any ideas, suggestion(s), enhancement requests, feedback and/or recommendation(s) regarding the Services, including without limitation, new and/or improved features or functionality relating thereto ("**Feedback**"), Dataplazma is free to use and disclose such Feedback without any obligation to Customer or such employees or contractors.

**6. Confidential Information**. Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified in writing as confidential at the time of disclosure, is identified as confidential in writing within thirty (30) days of the disclosure, or is of a nature that a reasonable person with knowledge of the Disclosing Party's business would understand to be confidential. Except as provided herein (including, without limitation, as required for Dataplazma to provide the Services), the Receiving Party will hold in confidence and not use or disclose any Confidential Information of the Disclosing Party. The Receiving Party's non-use and non-disclosure obligations hereunder will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or becomes publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party without restriction on use and/or disclosure from a third party; (iv) is independently developed by or for employees of the Receiving Party without use of or reference to any Confidential Information of Disclosing Party; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).

## **7. Warranty**

(a) Dataplazma represents and warrants that (i) it has sufficient right, title and interest in the Services in order to provide the Services pursuant to the terms and conditions of this Agreement, and (ii) its execution and performance of this Agreement will not violate or conflict with any obligation it has to any third party.

(b) THE FOREGOING WARRANTY DOES NOT APPLY TO, AND Dataplazma STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO, THIRD PARTY SERVICES.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND Dataplazma HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. Dataplazma NOR ITS LICENSORS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CUSTOMER ACKNOWLEDGES THAT Dataplazma DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

## **8. Mutual Indemnification.**

(a) Dataplazma Indemnification. Dataplazma will indemnify, defend, and hold Customer harmless from and against all un-Affiliated third-party claims, and all losses, damages, liabilities, and expenses, in each case, that are paid or payable to such un-Affiliated third parties pursuant to such claims (including reasonable attorneys' fees and expenses), to the extent arising out of or resulting from any third-party claim or allegation that the Services infringe or misappropriate such third party's patent, trademark, trade secret, copyright, or other intellectual property rights. Dataplazma's obligations pursuant to this Section 8(a) will not apply, however, to the extent that such claim is caused by: (i) Customer's use of the Services other than in accordance with the terms of this Agreement; (ii) Customer's failure to use or implement corrections or enhancements to the Services made available free of charge to Customer by Dataplazma, (iii) portions or components of the Services resulting in accordance with Customer specifications, (iv) modification of the Services that have not been performed by or on behalf of Dataplazma, and/or (v) combination of the Services with other products, services, processes or materials not supplied by Dataplazma (including, without limitation, Customer Data). "Affiliate" means any entity controlling, controlled by, or under common control with a party hereto, where "control" means the ownership of more than 50% of the voting securities in such entity.

(b) Customer Indemnification. Customer will indemnify, defend, and hold Dataplazma harmless from and against all un-Affiliated third-party claims, and all losses, damages, liabilities, and expenses, in each case, that are paid or payable to such un-Affiliated third parties resulting from such claims (including reasonable attorneys' fees and expenses), to the extent arising out of or resulting from any third-party claim or allegation that the Customer Data and/or Customer's provision thereof to Dataplazma violates such third-party's patent, trademark, trade secret, copyright, or other intellectual property or proprietary right(s), or any claim that Customer has violated any applicable law(s), regulation(s), or the rights of any employee or candidate.

(c) Indemnification Procedure. As a condition to the indemnifying party's obligations pursuant to this Section 7, the indemnified party must: (i) promptly notify the indemnifying party in writing of all indemnifiable claims; (ii) provide the indemnifying party with reasonable assistance to settle or defend such claims, at the indemnifying party's own expense; and (iii) grant to the indemnifying party the right to control the defense and/or settlement of such claims, at the indemnifying party's own expense; provided, however, that: (1) the failure to so notify, and/or provide assistance will only relieve the indemnifying party of its obligation to the indemnified party to the extent that the indemnifying party is prejudiced thereby; (2) the indemnifying party will not, without the indemnified party's consent (such consent not to be unreasonably withheld or delayed), agree to any settlement that: (x) makes any admission of wrongdoing on behalf of the indemnified party; or (y) consents to any injunction against the indemnified party (except an injunction relating solely to the indemnified party's continued use of any infringing Service); and (3) subject to the foregoing, the indemnified party will have the right, at its expense, to participate in any indemnifiable claim and to be represented by

legal counsel of its choosing, but will have no right to settle a claim without the indemnifying party's written consent.

(d) Sole Remedy. THIS SECTION 7 SETS FORTH CUSTOMER'S SOLE REMEDIES AND Dataplazma'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## **9. Limitation of Liability**

(a) Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL Dataplazma BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (I) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (II) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (III) LOSS OF GOODWILL OR REPUTATION; (IV) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (V) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER Dataplazma WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL Dataplazma'S AGGREGATE LIABILITY ARISING OUT OF AND/OR RELATED TO THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO Dataplazma UNDER THIS AGREEMENT IN THE TRAILING TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE APPLICABLE CLAIM.

(b) Limitation of Claims. Any claim or cause of action arising out of or related to use of the Service or to the Agreement must be filed within one (1) year after such claim or cause of action arose, or be forever waived.

## **10. Term and Termination**

(a) Term. This Agreement will remain in full force and effect for the Service Term as specified in the Order Form and will automatically renew for additional one year periods (each a "Renewal Service Term" and collectively, the "Term"), unless either party requests termination in writing at least thirty (30) days prior to the end of the then-current Term. A termination request by either party will be given via certified mail or via e-mail to respective Party Billing Contact.

(b) Suspension. Notwithstanding anything to the contrary in this Agreement, Dataplazma may impose limitations on bandwidth usage, and/or temporarily suspend



Customer's and any Authorized User's access to any portion or all of the Services if Dataplazma reasonably determines that (i) there is a threat to or attack on any of the Services; (ii) Customer's or any Authorized User's use of the Services abuses, disrupts or poses a security risk to the Services or to any other customer or vendor of Dataplazma; or (iii) Customer is in breach of its obligation to pay any Fees due under the Agreement (collectively, "Service Suspension(s)"). Prior to suspension of service pursuant to sub-Section (iii) above, Dataplazma will provide Customer with notice of non-payment and the amount due ("Non-payment Notice"). Unless the amount has been paid, Dataplazma reserves the right to suspend Customer access to the Services fourteen (14) calendar days after such Non-payment Notice. Dataplazma will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(c) Termination. In addition to any other express termination right set forth in this Agreement:

i. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches any material provision of this Agreement, including, without limitation, by Dataplazma, in the event of any breach by Customer of Section 3(a) above, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

ii. Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, and such proceeding is not dismissed within 120 days of institution; (B) makes or seeks to make a general assignment for the benefit of its creditors; or (C) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business without a successor.

(d) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of and/or access to the Service(s). No expiration or termination will affect Customer's obligation to pay all Fees that have become due before the effective date of such expiration or termination, or entitle Customer to any refund.

(e) Data. Upon any termination, Dataplazma will make all Customer Data available to Customer for electronic retrieval in .csv format for a limited period of thirty (30) days.

(f) Survival. Sections 4, 6, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement. No other provisions of this Agreement will survive the expiration or termination of this Agreement.

## **11. Miscellaneous.**

(a) Entire Agreement. This Agreement constitute the entire understanding of the parties with respect to the Service and supersedes all previous agreements, statements and understandings from or between the parties regarding the subject matter of this Agreement. This Agreement also supersedes any conflicting language contained in any applicable past or future purchase order regarding the subject matter of this Agreement. In the event of any conflict between the Terms of Service, the DPA and/or the Order Form, the following order of precedence will apply (in descending order): (1) the DPA, (2) the Terms of Service and (3) each Order Form. Notwithstanding the foregoing, in the event that an Order Form references a specific provision of these Terms of Service and states that it supersedes such provision, such Order Form will take precedence only with respect to such specific provision.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a “**Notice**”) must be in writing and to:

*Dataplazma*: 155 5th Street, 6th Floor

San Francisco, CA 94103

legal@Dataplazma.com

*Customer*: Billing Contact identified in the Order Form

All Notices must be delivered by personal delivery, email or certified or registered mail (in the latter case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party (or upon delivery, if by email); and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, to the extent such failure or delay is caused by any circumstances beyond such Party’s reasonable control.

(d) Waiver. No failure to exercise, or delay in exercising, any rights, powers or remedies arising from this Agreement will operate or be construed as a waiver of the rights of such a party to demand full compliance with the terms of this Agreement. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever.

(e) Severability. If any provision of this Agreement is declared invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability, the remainder of the agreement will remain valid and enforceable to the fullest extent permitted.

(f) Dispute Resolution.

i. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law.

ii. Negotiation. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, the parties will use their best efforts to settle the dispute. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

iii. Binding Arbitration. If the parties do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes shall be finally settled by binding arbitration taking place in San Francisco, California. Each of the parties to this Agreement hereby agrees and consents to such venue and waives any objection thereto. The arbitration shall be conducted in English, on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. The prevailing party shall be entitled to an award of reasonable attorney fees. An award of arbitration may be confirmed in a court of competent jurisdiction sitting in San Francisco County, California.

**(g) Class Action Waiver. EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.**

(h) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Dataplazma, which shall not be unreasonably withheld, conditioned. Any purported assignment or delegation in violation of this Section will be null and void. Dataplazma may freely assign and/or transfer this Agreement. No assignment or

delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(i) Compliance with Laws. Notwithstanding anything to the contrary, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Dataplazma are “commercial items” and according to

DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

(j) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.